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JURISDICTIONAL STATEMENT

Plaintiff appeals from a final judgment in favor of the Missouri Department of Health on a motion for judgment on the pleadings entered by Cole County Presiding Judge Byron Kinder on March 10, 2000. On February 26, 2002, this Court granted transfer after opinion by the Western District Court of Appeals.

STATEMENT OF FACTS

Dorinda Craig initially filed suit in Cole County Court in December 1997. In her Petition, Craig alleged only a violation of her rights under the Americans with Disabilities Act (ADA). (L.F. 5-12). The Department of Health ("DOH") immediately removed the suit to federal court. (L.F. 13-26).

While the case was pending in federal court, the United States Court of Appeals for the Eighth Circuit issued an opinion that deprived the federal district court of jurisdiction. *See Alsbrook v. City of Maumelle, Ark.*, 184 F.3d 999, 1010 (8th Cir. 1999) (states, pursuant to the Eleventh Amendment, are immune from suits in federal court under the ADA). Because the federal court was without jurisdiction over Craig's ADA claim, it remanded the case back to state court on September 29, 1999. (L.F. 55-56). But prior to issuing a remand order, the federal court allowed Craig to amend her complaint[1] to add a Missouri Human Rights Act (MHRA) claim, a claim over which the federal court also had no jurisdiction. *Coller v. Department of Economic Dev.*, 965 F. Supp. 1270, 1274 (W.D. Mo. 1997) (L.F. at 49, Supp. L.F.).

On remand, DOH filed an Answer to Plaintiff's Second Amended Complaint remanded from federal court (L.F. 57-64), and a Motion for Judgment on the Pleadings, asserting that the state court

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[1]DOH had answered plaintiff's petition after removal to federal court. Thus, plaintiff needed leave of court to file her amended petition. (L.F. 46). Plaintiff's Second Amended Complaint added Section 1983 claims against individual defendants, but plaintiff withdrew those claims prior to the federal court's order granting plaintiff's motion for leave to file her Second Amended Complaint. (L.F. 53, 54, 56; Supp. L.F. 9-12).

did not have jurisdiction over the ADA claim because of sovereign immunity and that the MHRA claim was barred by the two-year statute of limitations set forth in RSMo § 213.111.1. (L.F. 65-85). The trial court heard argument on DOH's motion on February 28, 2000, and granted DOH's motion on March 16, 2000. (L.F. 95-98).

Craig filed a Motion for New Trial or to Set Aside the Judgment on April 14, 2000. (L.F. 99-102). On June 27, 2000, Craig filed a Motion for Leave to File Third Amended Petition. (L.F. 109-126). Craig did not notice for hearing either of these motions, or her previously filed Motion for Leave to File First Amended Petition, which she had filed on September 24, 1999, *prior* to the remand (L.F. 2-4, 29-44). Therefore, the trial court never ruled on Craig's motions for leave to file amended petitions and the Motion for New Trial or to Set Aside the Judgment was deemed overruled ninety days after it was filed, on July 13, 2000. Missouri Supreme Court Rule 78.06.

POINTS RELIED ON

I.

The trial court correctly dismissed Craig's claim under the Missouri Human Rights Act because it was time barred in that Craig did not file suit within two years of the alleged discriminatory event as required by RSMo § 213.111.1, and nothing prevented Craig from filing suit in state court during this time period.

Hill v. John Chezik Imports, 797 S.W.2d 528 (Mo. App. 1990)

Hartman v. Smith & Davis Mfg. Co., 904 F.Supp. 983 (E.D. Mo. 1995)

RSMo § 213.111.1

II.

The trial court correctly dismissed Craig's claim under the Missouri Human Rights Act because it was time barred in that Craig did not file suit within two years of the alleged discriminatory event as required by RSMo § 213.111.1, and the federal district court lacked jurisdiction to allow Craig to amend her complaint to include the claim.

Pullman v. Jenkins, 305 U.S. 534 (1939)

Coller v. Department of Economic Dev., 965 F.Supp 1270 (W.D. Mo. 1997)

RSMo § 213.111.1

28 U.S.C. § 1447(c)

III.

The trial court did not abuse its discretion when it refused to grant Plaintiff's Motion for New Trial or to Set Aside the Judgment because plaintiff did not show good cause to grant a new trial in that the trial court's findings were based on the record.

Williams v. St. Joe Minerals Corp., 639 S.W.2d 192 (Mo. App. 1982)

ARGUMENT

I.

The trial court correctly dismissed[1] Craig's claim under the Missouri Human Rights Act because it was time barred in that Craig did not file suit within two years of the alleged discriminatory event as required by RSMo § 213.111.1, and nothing prevented Craig from filing suit in state court during this time period.

September 24, 1996, the date DOH terminated Craig, is the last day that DOH could have allegedly discriminated against Craig. (L.F. at 7, ¶ 25). Section 213.111 RSMo sets a two-year statute of limitations for claims made pursuant to the Missouri Human Rights Act ("MHRA"):

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[1]When reviewing a dismissal based on a motion for judgment on the pleadings, this Court reviews the allegations and determines if the facts pleaded are insufficient as a matter of law. *Deuschle v. Jobe*, 30 S.W.3d 215, 217 (Mo. App. 2000). "Although a motion for judgment on the pleadings admits the truth of well pleaded facts, it does not admit the truth of conclusions of law and matters that are not well pleaded." *Grove v. Sutliffe*, 916 S.W.2d 825, 828 (Mo. App. 1995).

> Any action brought in court under this section shall be filed within ninety days from the date of the commission's notification letter to the individual but no later than two years after the alleged cause occurred or its reasonable discovery by the alleged injured party.

§ 213.111.1 RSMo. Thus, Craig had two years, until September 24, 1998, to file an MHRA claim. But Craig did not file her MHRA claim until September 29, 1999, over a year outside the limitations period. (L.F. 77, 78).

"Statutes of limitations are favored in the law, and cannot be avoided unless the party seeking to do so brings himself within some exception." *Langendoerfer v. Hazel,* 601 S.W.2d 290 (Mo. App. 1980). Strict compliance is required with regard to specific statutory exceptions. *Neal v. Laclede Gas Co.*, 517 S.W.2d 716, 719 (Mo. App. 1974). Statutes of limitations may be suspended or tolled only by specific disabilities or exceptions enacted by the legislature, and courts cannot extend those exceptions. *Id.* The only non-statutory exception recognized by Missouri courts is the "litigation exception." *Premier Bank v. Tierney*, 1997 U.S. Dist. LEXIS 4691, * 22 (W.D. Mo. 1997).

Craig argues that the litigation exception allows her to bring her claim over a year out of time. The litigation exception is available to toll the statute of limitations "where a person is prevented from exercising his legal remedy by the pendency of legal proceedings." *Hill v. John Chezik Imports*, 797 S.W.2d 528, 530 (Mo. App. 1990). But a plaintiff cannot rely on the litigation exception "where the proceedings are 'provoked, induced, or promoted' by the party claiming the tolling." *Id.* (quoting *Follmer's Market, Inc. v. Comprehensive Accounting Service Co.*, 608 S.W.2d 457, 460 (Mo. App. 1980).

In *Hill*, the plaintiff brought suit in federal court based on sexual harassment under Title VII and the Missouri Human Rights Act. The federal court dismissed her Title VII claim as untimely. The court dismissed without prejudice Hill's MHRA claim because it was without jurisdiction once the basis for pendent jurisdiction was dismissed. Hill then filed a new action in state court asserting her MHRA claim, outside the statute of limitations period. The trial court dismissed the claim as barred.[2] Hill argued on appeal that filing her federal court claim, which included her MHRA claim, within the statute of limitations period equitably tolled the MHRA statute of limitations for the period her case was pending in federal court. The court disagreed. It held that plaintiff's "state action could have been pending, but stayed, until the outcome of the federal action." Thus, she was not prevented from exercising her legal remedy by the pendency of the federal court proceedings. It further held that plaintiff could not avail herself of the litigation exception because she had "provoked, induced, or promoted" the federal court proceedings. *Id*. at 530. Craig's position is even weaker than Hill's, because Craig did not initially include an MHRA claim in her suit.

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[2]Craig adds that *Hill* would be decided differently today based on the Judicial Improvements Act of 1990 (preserving a claim for thirty days after it is dismissed in federal court). 28 U.S.C. § 1367 (d). But Section 1367(d) does not toll the limitations period for state law claims asserted against nonconsenting state defendants that are dismissed on Eleventh Amendment immunity grounds. *Raygor v. Regents of the University of Minnesota*, 122 S. Ct. 999, 2002 U.S. LEXIS 1375 **21-24 (2002).

The litigation exception was also asserted by the MHRA plaintiff in *Hartman v. Smith & Davis Mfg. Co.*, 904 F. Supp. 983 (E.D. Mo. 1995). Hartman filed her sex discrimination suit four years after her termination. She claimed that the MHRA statute of limitations was tolled pursuant to the litigation exception because she was prevented from filing her lawsuit "by the pendency of the Administrative Process before the Missouri Commission on Human Rights." *Id.* at 986. The court held that the litigation exception was unavailable to Hartman because she had initiated the proceedings before the Missouri Commission on Human Rights. In addition, Hartman could have commenced her lawsuit during the pendency of the administrative proceedings and thus the pendency of the administrative proceedings did not prevent her from commencing her lawsuit. *Id.* at 986-87.

Craig's position is analogous to Hartman's. The litigation exception does not apply because Craig, like Hartman, initiated the proceeding before the Missouri Commission on Human Rights. She also initiated the proceeding in state court, in which she alleged only an ADA claim. DOH then removed this solely federal claim to federal court. DOH did not, as Craig suggests, "cause" these legal proceedings. App. Sub. Br. at 11. And nothing prevented Craig from filing her MHRA claim in state court at any time. *See Hill*, 797 S.W.2d at 530; *Hartman*, 904 F. Supp. at 986-87. Therefore, the pendency of the federal court proceeding did not prevent her from exercising her legal remedy and she is not entitled to avail herself of the litigation exception to toll the two-year statute of limitations.

Beyond her litigation exception argument, Craig also claims, without authority, that she timely filed her MHRA claim because "Section 213.111.1 does not require that a cause of action be filed within two years of the time in which the claim arose," rather "[t]he statute requires that a suit be filed within two years of the date the claim accrued" and her claim "did not accrue during the time the

[ADA] claim was pending in federal court because she could not have filed [the MHRA claim] in federal court." (App. Sub. Br. at 12). This ignores the fact that she could have filed her MHRA claim at any time in state court. It also mischaracterizes the law which clearly states the action must be brought in court "no later than two years after the alleged cause *occurred* or its reasonable discovery by the alleged injured party." RSMo. § 213.111.1. DOH's alleged discrimination occurred, at the latest, on the date Craig was terminated and there is no allegation that she did not reasonably discover she had been terminated until over a year later. *See Gipson v. KAS Snacktime, Co.*, 83 F.3d 225, 229 (8th Cir. 1996) (discharge is a discrete act, completed at the time it occurred, and time for filing lawsuit runs from date of act even if its effects on the employee are long-lasting).

II.

The trial court correctly dismissed Craig's claim under the Missouri Human Rights Act because it was time barred in that Craig did not file suit within two years of the alleged discriminatory event as required by RSMo § 213.111.1, and the federal district court lacked jurisdiction to allow Craig to amend her complaint to include the claim.

Craig did not file her MHRA claim within two years of her termination from DOH. RSMo § 213.111.1; (L.F. 7, ¶ 25, 77, 78). Instead of filing an MHRA claim, Craig chose to file only an ADA claim. Because this was a federal statutory claim, DOH removed the case to federal court. During the pendency of this case in federal court, the Eighth Circuit decided *Alsbrook v. City of Maumelle, Ark*., 184 F.3d 999, 1010 (8th Cir. 1999), in which it held that Congress had not effectively abrogated the states' sovereign immunity in enacting the ADA. Therefore, the federal court lacked jurisdiction over plaintiff's case. *Id*. And, because the federal court lacked jurisdiction over plaintiff's case, plaintiff's "relation back" argument is unavailing.

In those situations where a federal district court lacks subject matter jurisdiction over a case removed from state court, the court only possesses jurisdiction to remand the case. 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case *shall* be remanded.") (emphasis added); *KCPO Employees Credit Union v. Mitchell,* 421 F. Supp. 1327, 1328 (W.D. Mo. 1976) (28 U.S.C. § 1447(c) requires remand as the first order of business under circumstances where the federal court lacks both original and removal jurisdiction). The federal district court, however, ignored this clear limitation on its power. Rather, the

federal district court entered an order permitting plaintiff to file an amended complaint in federal court presenting an MHRA claim.

The federal district court was wholly without jurisdiction to issue the order permitting the filing of the amended complaint. *See Pullman Co. v. Jenkins,* 305 U.S. 534, 537 (1939) (amended complaint should not be considered in ruling upon motion to remand; complaint improvidently removed cannot confer jurisdiction necessary to entertain its amendment); *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064-1066 (9th Cir. 1979) (no federal jurisdiction to entertain later amendment to complaint where court lacks subject matter jurisdiction over case as it existed at time removed from state court); *Nichols v. Southeast Health Plan of Alabama, Inc.*, 859 F. Supp. 553, 559 (S.D. Ala. 1993) (federal court lacking subject matter jurisdiction over a removed case must remand; federal court lacking subject matter jurisdiction cannot rule on other pending motions), *citing* Wright & Miller, *Federal Practice & Procedure*, § 3739 (1985 & Supp. 1993); *Hicks v. Universal Housing, Inc.*, 792 F. Supp. 482 (W.Va. 1992) (defect in jurisdiction cannot be cured by granting plaintiff's motion to amend; court, not having jurisdiction, may not now proceed to consideration of motion to amend). Because the order of the federal district court granting plaintiff leave to file an amended complaint was entered without jurisdiction, it is a nullity. *See Strozewski v. City of Springfield,* 875 S.W.2d 905, 906 (Mo. banc 1994).

Furthermore, the federal district court recognized it had no jurisdiction over the new MHRA claim it permitted plaintiff to file. *Coller v. Department of Economic Dev.,* 965 F. Supp. 1270, 1274 (W.D. Mo. 1997) (L.F. at 49). No federal court has jurisdiction to grant leave to file an

amended complaint asserting new claims over which the court concedes that it has no jurisdiction. The improper order granting leave to amend cannot be cured by an order to remand to state court.

Even if plaintiff had been properly permitted to file her amended complaint in federal court, plaintiff's MHRA claim would be untimely and barred by the applicable statute of limitations. The federal court's action, allowing Craig to bring her MHRA claim over a year out of time, flew in the face of the strict time requirements which are mandatory conditions for suit under the MHRA. The federal court in this case attempted to expand the legislative grant of jurisdiction contrary to the dictates of the MHRA. It attempted to expand the state's waiver of sovereign immunity contained within the MHRA, RSMo 213.010(6), in violation of the legal doctrine that waivers of sovereign immunity must be strictly construed. *Richardson v. State Highway & Transp. Comm'n*, 863 S.W.2d 876, 882 (Mo. banc 1993).

As the United States Supreme Court recently reaffirmed, "with respect to suits against a state sovereign in its own courts, we have explained that a State 'may prescribe the terms and conditions on which it consents to be sued'" and "[w]hen waiver legislation contains a statute of limitations, the limitations provision constitutes a condition of the waiver of sovereign immunity." *Raygor*, 122 S. Ct. 999, 2002 U.S. LEXIS 1375 **18-20 (2002). The Court specifically declined to interpret a tolling statute that would "require a State to defend against a claim in state court that had never been filed in state court until some indeterminate time after the original limitations period has elapsed." *Id*. at **18.

Because the federal court did not have jurisdiction to amend, the complaint as remanded consisted of only an ADA claim. The circuit court was in the same position as the federal court with regard to that claim. The circuit court did not have jurisdiction over the ADA claim because that claim

was barred by sovereign immunity. *See Board of Trustees of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 121 S.Ct. 955, 968 n.9 (2001) (extension of Title I of the ADA to the states was not a proper exercise of Congress's power under section five of the Fourteenth Amendment). The federal district court remanded a nullity. According to Missouri law and the Rules of Civil Procedure, the circuit court reached the correct result when it granted defendant's motion for judgment on the pleadings.

To the extent Craig argues that her "First Amended Petition" (L.F. 29-44) or her "Third Amended Petition" (L.F. 107-126) somehow cures the above jurisdictional defect, the argument lacks merit because neither of these Petitions was ever filed.[3] Craig never received leave to file either her "First Amended Petition" or her "Third Amended Petition." Because DOH had answered Craig's original petition after removal to federal court, Craig needed leave of court to file an amended petition.

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[3]Craig asserts that she "filed her First Amended Petition in State Court on September 24, 1999." App. Sub. Brief at 12. This mischaracterizes the record. Craig actually filed a Motion for Leave to File First Amended Petition on that date. The case was still in federal court at the time. L.F. 55-56 (remand order dated September 29, 1999). Thus, at the time Craig filed her motion, the state court was without jurisdiction over this case. 28 U.S.C. § 1446 (d) (upon filing of notice of removal, state court shall proceed no further unless and until the case is remanded); *Ward v. Resolution Trust Corp.*, 972 F.2d 196, 198 (8th Cir. 1992) (after removal, only the federal district court can restore jurisdiction to the state courts); *Polito v. Molasky,* 123 F.2d 258, 260 (8th Cir 1941) (jurisdiction of state court absolutely ceased upon removal to federal court).

Rule 55.33 (pleading may be amended once as a matter of course at any time *before* a responsive pleading is served, otherwise pleading may be amended only by leave of court); *Williams v. St. Joe Minerals Corp.*, 639 S.W.2d 192, 195 (Mo. App. 1982) (state court receives case on remand from federal court removal in posture it is in when remanded). Craig apparently recognized this obstacle because she filed motions for leave to file her "First Amended Petition" and her "Third Amended Petition." L.F. 29-30; 107-108.

Although Craig filed motions for leave to file her "First Amended Petition" and her "Third Amended Petition," the trial court never ruled on these motions because they were never noticed for hearing and, therefore, were never before the trial court. Missouri Supreme Court Rule 55.30(a) directs trial courts to establish regular times and places at which motions requiring notice and hearing may be heard and disposed of.[4] In the Nineteenth Circuit, the local rule provides that all motions may be heard on Law Day upon notice pursuant to Supreme Court Rules or upon consent of the parties. Nineteenth Judicial Circuit Rule 33.1. Supreme Court Rule 44.01(d) requires notice of the hearing on a written motion be served not later than five days before the hearing. *See State v. Scott*, 933 S.W.2d

[4]Although Rule 55.30(c) provides that a court may make provision by rule or order for the submission and determination of motions without oral hearing, many Circuits, including the Nineteenth, have not adopted such a rule.

884, 885 (Mo. App. 1996) ("We find no indication that Scott requested a hearing date for his motion or gave notice of it as required by Rule 44.01(d)."); *In re Estate of Kibbe*, 704 S.W.2d 716, 717 (Mo. App. 1986) (trial court could not take up motion for new trial before notice and hearing).

Craig provided no such notice. As a result, no hearings were held and the trial court never ruled the motions that plaintiff failed to put before it. *See Allen v. Director of Revenue*, 4 S.W.3d 593, 595 (Mo. App. 1999) (court not required nor expected to rule on an unnoticed motion); *see also Scott*, 933 S.W.2d at 885 ("We will not convict the circuit court of error for not ruling on a motion of which it was not notified."). Because Craig did not request a hearing date for her motions to amend or give notice as required by Rule 44.01(d), Craig waived or abandoned her motions by failing to proceed with respect to them. *Vermillion v. Burlington Northern R. Co.*, 813 S.W.2d 947, 949 (Mo. App. 1991) ("A motion may be waived or abandoned by failing to proceed with respect to it.").

III.

The trial court did not abuse its discretion when it refused to grant Plaintiff's Motion for New Trial or to Set Aside the Judgment because plaintiff did not show good cause to grant a new trial in that the trial court's findings were based on the record.

Denial of a motion for a new trial is reviewed for abuse of discretion. *City of Pleasant Valley, Missouri v. Baker*, 991 S.W.2d 725, 727 (Mo. App. 1999). Craig's Motion for a New Trial or to Set Aside the Judgment argued that the trial court made a finding that was not based on facts contained within the pleadings - specifically, the date when plaintiff filed her MHRA claim. But Craig admitted that she first sought leave to file her MHRA claim as part of her Second Amended Complaint

in federal court. (L.F. 87, ¶8). She also admitted that Judge Laughrey granted her leave to file her Second Amended Complaint joining her MHRA claim on September 29, 1999. (L.F. 87, ¶ 7-9). And the federal judge's order granting leave to file the Second Amended Complaint was attached to Defendant's Motion for Judgment on the Pleadings. (L.F. 76-85). The federal judge's order further sets forth that Craig had previously filed only an ADA claim, and that the federal court was granting her leave to file an MHRA claim. (L.F. 76-78). Thus, Craig's assertion that "[n]othing in the court file indicated to the trial court when Craig's MHRA claim was filed in federal court" is wrong. (App. Sub. Br. 20).

Craig argues that the Second Amended Complaint was not part of the state court file. But "t[h]e state court receives the case on remand from federal court removal in the posture it is in when remanded. Failure to refile a pleading after remand is not fatal to a state court ruling on the pleading." *Williams v. St. Joe Minerals Corp.*, 639 S.W.2d 192, 195 (Mo. App. 1982). Since the case, when remanded, was governed by the Second Amended Complaint, that complaint was before the state trial court. *See id.*

If Craig is now claiming that the Second Amended Complaint was never filed, then all issues with regard to an MHRA claim are nonexistent because then there exists no filed pleading containing an MHRA claim.

Craig's original Petition alleges only an ADA claim. The original Petition states that it "arises under the Americans with Disabilities Act" and that Craig "brings this cause of action pursuant to the ADA." L.F. 5. It also states that the EEOC issued Craig a "right to sue" letter and that she filed her petition within 90 days of receiving her "right to sue" letter from the EEOC. *Id.* The Petition makes no

mention of the MHRA, a cause of action pursuant to the MHRA, or a "right to sue" letter received from the Missouri Commission on Human Rights ("MCHR"). A "right to sue" letter is a prerequisite for filing an MHRA claim. § 213.111 RSMo. But Craig did not even request her "right to sue letter" from the MCHR until August 10, 1999, over twenty months *after* filing her original Petition. L.F. 87, ¶ 9. The fact that Craig's original Petition does not allege an MHRA claim is further evidenced by her subsequent efforts to amend to add an MHRA claim in both federal and state court.

Craig's "First Amended Petition" (L.F. 29-44) and "Third Amended Petition" (L.F. 107-126) were never filed because leave to file was never granted by the trial court. (L.F. 2-4). Rule 55.33(a). And contrary to Craig's assertion, she was required to obtain leave of court to file these amended petitions because DOH had filed an answer to Craig's original Petition after removal to federal court. Rule 55.33 (pleading may be amended once as a matter of course at any time *before* a responsive pleading is served, otherwise pleading may be amended only by leave of court); *Williams v. St. Joe Minerals Corp.*, 639 S.W.2d 192, 195 (Mo. App. 1982) (state court receives case on remand from federal court removal in posture it is in when remanded).

Finally, Craig's arguments that her original Petition contained a MHRA claim, and that her "First Amended Petition" and/or her "Third Amended Petition" were filed and active complaints, are raised for the first time on appeal and are not referred to in any point on appeal. As such, these arguments are not properly preserved. *Seitz v. Lemay Bank & Trust*, 959 S.W.2d 458, 462 (Mo. banc 1998) (issues raised for first time on appeal are not preserved for review); *Artman v. State Bd. Of Registration for Healing Arts*, 918 S.W.2d 247, 252 (Mo. banc 1996) (same); Missouri Supreme Court Rule 84.04 (e) (argument shall be limited to those errors included in "Points Relied

On"); *State v. Boone Retirement Center, Inc.*, 26 S.W.3d 265, 276 (Mo. App. 2000) (court does not consider arguments not referred to in a point on appeal or not properly preserved).

CONCLUSION

For the foregoing reasons, DOH requests that this Court affirm the trial court's decision dismissing plaintiff's cause of action.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND OF COMPLIANCE WITH RULE 84.06(b) and (c)

The undersigned hereby certifies that on this 5th day of April, 2002, one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

David J. Moen
613 E. McCarty St.
Jefferson City, MO 65101

The undersigned certifies that the foregoing brief complies with the limitation contained in Rule 84.06(b), and that the brief contains 4465 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

_____
Assistant Attorney General